THE HISTORY OF NEGRO SUFFRAGE IN THE SOUTH.[1]

I. *Before the Revolution.*

AS to race requirements for suffrage in colonial times, Dr. Cortlandt F. Bishop, in his *History of Elections in the American Colonies*, says that he knows of "no law that would prevent an Indian or a negro, if otherwise qualified, from voting in the northern colonies." So far as I have been able to learn, there were at first no laws disfranchising colored freemen in the South. Dr. Bishop even goes further and says that such laws were "of a comparatively late date."

North Carolina seems to have been the first to disfranchise the negro. In the Manuscript Revisal of the Laws, made in 1715, we find it declared that "no negro, mullatto or Indians shall be capable of voting for members of Assembly."[2] We can only approximate the date of the passage of this law. Burrington,[3] in his comments on the Revisal, says that this was "an old law taken from one of the Lords Proprietors' original constitutions and hath undergone little alteration." He recommends that the act be repealed, as the people "assemble and chuse Burgesses on the day by the act appointed without any writ for it." The law was repealed by the king's order in 1734, probably in response to this recommendation. It was contrary, moreover, to the spirit of the colonial government; for the proprietors, in their instructions to the governor of Albemarle in 1667, had granted the ballot to all freemen.[4] An act of the year 1743 carried out the spirit

[1] This paper was presented to the World's Congress Auxiliary on Government, at Chicago, in August, 1893. The writer wishes to express his thanks to Dr. C. Meriwether for valued criticisms and suggestions on the subject.

[2] Law printed in North Carolina Colonial Records, II, 213, and quoted by Dr. Bishop, who calls attention to the fact that "Mustee," which is to be found in the original, is omitted in this reprint. The act stands 10 in the revisal of 1752.

[3] Col. Rec., III, 180.

[4] *Ibid.*, I, 165.

of this instruction and gave the suffrage to all freemen, but this was repealed before 1760. An election law of this latter year provided that all freeholders should vote, and defined a freeholder as a

> person who, *bona fide*, hath an estate real for his own life time, or the life of another, or any estate of greater dignity or of a sufficient number of acres in the county which by the law enables him to vote or be a candidate for such county.

No other election law was passed by the colony. In theory, whatever may have been the practice, the free negro had after this the right to the ballot.

South Carolina was the next to forbid the negro the ballot. As early as 1701 and 1703, complaints had been made from Berkeley County, that "free negroes were received and taken for as good electors as the best freeholders in the province,"[1] but the law of 1704 prescribed no qualifications save a freehold and a certain amount of property.[2] The law of 1716 was the first to insert the word white.[3] This was retained in the laws of 1721, 1745 and 1759,[4] and was unchanged in the constitution of 1776. Though these earlier laws required that electors must be white, it was not till 1759 that the same qualification was expressly applied to the elected.

In Virginia an act of 1705 had forbidden negroes, mulattoes and Indians to hold office. They were disfranchised for the first time in 1723.[5] When this law was referred by the Board of Trade to Richard West for the consideration of its legal aspects, he replied: "I cannot see why one freeman should be used worse than another merely upon account of his complexion."[6] This law was probably repealed by proclamation after being in force ten years or more; for it is found in the revisal of 1733, but not in that of 1766.[7] Another act dis-

[1] See the petition of Jos. Boone in N. C. Col. Rec., I, 639.
[2] Cooper, Statutes at Large of S. C., II, 249.
[3] *Ibid.*, III, 3.
[4] *Ibid.*, III, 136, 657; IV, 99.
[5] Hening, Statutes at Large of Va., III, 250; IV, 133, 134.
[6] Sumner's Works, X, 193.
[7] Hening quotes it from the ed. of 1733, p. 339.

franchising negroes, mulattoes and Indians, although freeholders, was passed in Virginia in 1762.[1]

Georgia disfranchised the negroes in 1761.[2]

II. *From the Revolution to the Civil War.*

Manhood suffrage was not the prerogative of white men in the South where the slaveholding aristocracy predominated. This aristocracy was to its own members a democracy of democracies; to the outsider it was an oligarchy. The struggle against the limitations which it imposed went on steadily. The evolution was the same in all the states. Virginia may be taken as a type.

Under the earliest laws of Virginia, all freemen had a voice in affairs. This concerned first the daily matters of the hundreds, afterward the election of Burgesses. But in 1655 the law was changed by the Commonwealth men, and suffrage was confined to "housekeepers, whether freeholders, leaseholders or otherwise tenants." This law was repealed in 1656, but in 1670 the king, by letter to the royal governor, and without consent of the Virginia Assembly, went back to the principle first applied by the liberal party in 1655. None but "freeholders and housekeepers" now had the suffrage, and the reason is plain: the persons who had served their time as indentured servants had little interest in the country and made disturbances at the elections.[3] The act of Charles II gave the colony an aristocratic character.[4] The principles thus embodied in the organic laws of the colony were not changed in 1776. The landholding aristocracy prided themselves on their superior power and privileges.[5] But exclusion from a voice in the elections was not pleasant to the landless class of citizens,

[1] Hening, VII, 517. [2] Bishop, *op. cit.*, 52.

[3] Hening, I, 403, 411, 475; Cooke's Virginia, 222–224.

[4] It is worthy of note, as an indication of the democratic character of Bacon and his followers, that the right of suffrage was restored to all freemen by them in 1676, but their laws were repealed the next year. Hening, II, 356, 380.

[5] Debates in Va. Convention of 1829–30, p. 57.

who were growing in numbers, wealth and influence. The convention of 1830 yielded to the pressure, and the new constitution extended the right of suffrage, though still with a property or tax qualification, to "white male citizens of the commonwealth."[1] All the discussions of this clause of the constitution deal with "free white men." There is no reference to the right of free colored men to the franchise; they seem not to have been considered at all in this connection.[2] The constitution of 1850 cut out the tax qualification and thus established, with certain requirements for residence, white manhood suffrage. In 1864 a convention of representatives from those parts of Virginia which were then within the Union lines framed a constitution which gave the franchise to white male citizens only. Negroes never voted in Virginia in the period from the Revolution to the Civil War.

This is not essentially different from the course of development in most of the other Southern states. Seven states besides Virginia — South Carolina, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas — limited the ballot to white men clearly and distinctly. The same was true of Georgia, under the constitution of 1777. The constitution of 1789, however, gave the franchise to "citizens and inhabitants," and this remained the law until 1865; but it is clear that the expression was never intended to include the free negro. The Georgia Code of 1851 forbade emancipation; forbade free negroes to come into the state; required those who were already there to be registered annually; and gave the clerk power to refuse certificates of registration.[3]

North Carolina, by the constitution of 1776, provided that every freeman with a freehold of fifty acres should vote for members of the state Senate, and that every freeman who had paid public taxes should vote for members of the House of Commons. The Tennessee constitution of 1796, probably under the influence of the North Carolina provision, gave the

[1] See Poore, Charters and Constitutions of the U. S.

[2] Debates, 42 *et seq.*

[3] A law which sold as slaves those who did not take out such certificates was repealed in 1824.

ballot to all freeholders, but the constitution of 1834 restricted suffrage to white men.[1] This restriction no doubt had a reflex influence on North Carolina. We have seen that North Carolina had no law in 1776 establishing a color qualification for the ballot. But there is doubt as to whether or not the framers of the constitution of 1776 intended to include free negroes as a part of the freemen of the state. Mr. Daniel said in the convention of 1835 that the bill of rights was understood to apply only to free white men.[2] Mr. Macon said that free negroes were never known to vote before the Revolution, that they were never considered citizens, and did not exercise the privilege until many years after.[3] Mr. Gaston explained this as due to the fact that at the time of the Revolution there were very few free negroes, for there had been little emancipation. But, however this may have been, it is perfectly clear that they were considered citizens as early as 1778,[4] and that they enjoyed the suffrage up to 1835, when the constitution was changed. Before 1835 the supreme court had declared them citizens.[5] And later, in the case of the State *vs.* Manuel,[6] which came up in 1838, Judge Gaston said:

> Slaves manumitted here become freemen, and therefore, if born within North Carolina, are citizens of North Carolina, and all free persons born within the state are born citizens of the state. . . . The constitution extended the elective franchise to every freeman who had arrived at the age of twenty-one and paid a public tax; and it is a matter of universal notoriety that under it free persons, without regard to color, claimed and exercised the franchise, until it was taken away from free men of color a few years since by our amended constitution.[7]

[1] No man was excluded from the ballot for color if he was a competent witness against a white man. Unfortunately for us, the debates in this convention were never published. The arguments on this question would have been of great interest. There is nothing of service in the journal of the convention.

[2] Debates in Convention of 1835, p. 61. [3] *Ibid.*, 65–69.

[4] *Ibid.*, 352. [5] *Ibid.*, 357. [6] 4 Dev. & Bat., 25.

[7] The same court said in 1844, in the case of The State *vs.* Newsom, that this important case in 1838 was considered "with an anxiety and care worthy of the principle involved." See use made of this in Sumner's Works, VIII, 461, 462.

So clearly established had the negro's right to vote become that many of the county clerks, in making their returns in 1833, failed to distinguish between black and white polls.[1] But the right was not uniformly exercised. In a number of counties negroes had never voted. In general, however, they had been allowed the franchise, and their numbers were considerable. In Halifax County there were three hundred colored voters, in Hertford one hundred and fifty, in Chowan fifty, in Pasquotank seventy-five. In some counties they held the balance of power, and Mr. Daniel remarks that he found, after thirty years' observation, that they uniformly voted for men of character and talent.[2] Their votes were eagerly sought for. "The opposing candidates, for the nonce oblivious of social distinction and intent only on catching votes, hobnobbed with the men and swung corners all with dusky damsels at election balls."[3]

The project to deprive the free negroes of the suffrage met with much opposition. This project was not the offspring of momentary caprice, but of a long pent-up feeling. In 1826 Bartlett Yancey had written Willie P. Mangum that there was hostility to free-negro suffrage in all the counties and in almost all the towns, and that this feeling was due largely to the work of colonization and abolition societies. But, on the other hand, it was urged in the North Carolina convention that some of those colored men, now to be disfranchised, had done service in the war of the Revolution. Some had taken the oath of allegiance. Some were freeholders, and these, with others, were taxpayers.[4] They had been accustomed to exercise the

[1] Debates in Convention of 1835, p. 30.

[2] *Ibid.*, 61, 69, 80, 353, 355. In Tennessee, Cave Johnson and John Bell said they were elected to Congress by the votes of colored persons (Sumner's Works, X, 192). In 1830 the free negro population of North Carolina was 19,543; of Tennessee, 4555. The North Carolina counties with a free negro population of more than 400 were: Beaufort, with 487; Brunswick, 408; Craven, 1003; Cumberland, 686; Granville, 759; Halifax, 2079; Hertford, 953; Northampton, 936; Orange, 619; Pasquotank, 1038; Robeson, 605; Wake, 833. Davidson, with 471, had the largest free negro population in Tennessee. Hawkins came next, with 386.

[3] Buxton, Reminiscences of the Bench and Fayetteville Bar.

[4] Debates, 61.

right, and deprivation would now be a hardship. They would be useful as a counterpoise to the slaves, should the latter plot rebellion: for when the authorities of San Domingo in 1791 put free negroes for meritorious services, on the same footing as white men, it produced the happiest effect; but when the French government deprived them of this equality a few years later, it had the effect of throwing them into the ranks of the slaves.[1] The convention was quite evenly divided on the question, and the debates were very earnest. Various property limitations were suggested by way of compromise, but the outcome was the adoption of the provision excluding all negroes from the suffrage, by a vote of 66 to 61.

This was the end of negro suffrage in North Carolina and in the South until the days of Reconstruction.

It will be of interest to compare the conditions of suffrage in the North and West to see if these states were any more liberal than those in the South. Omitting the eleven Southern states under consideration, we can divide all the remaining states into three groups: (1) Those that never established a color qualification for the suffrage; (2) those that established such a qualification, but only at a relatively late date; (3) those which limited the suffrage to white men from the beginning.

1. Maine, in 1820, and Rhode Island, in 1842, granted the suffrage to male citizens of the United States. There is no mention of color, but negroes might have been excluded, on the ground that they were not citizens; for in 1833 Chief Justice Daggett, of Connecticut, charged that "slaves, free blacks and Indians" were not citizens within the meaning of section 2, article 4, of the federal constitution. This anticipated the Dred Scott decision.[2] There is no mention of color in the laws of Massachusetts, New Hampshire and Vermont. But New

[1] Debates, 354.

[2] Hurd, Law of Freedom and Bondage, II, 46. John F. Denny, of Pennsylvania, in his Inquiry into the Political Grade of the Free Colored Population under the Constitution of the United States, elaborately sustains the same view. The supreme court of Tennessee decided in 1838 that negroes were not citizens under the United States constitution (Kent, II, 301). On the other hand, see decision of the North Carolina supreme court, *ante*.

Hampshire found it necessary in 1857, and Vermont in 1858, to enact that negroes should not be excluded from the ballot.

2. Of the second group Delaware introduced the color qualification in 1792; Kentucky, in 1799; Maryland, in 1809 and 1810;[1] Connecticut, in 1818; New Jersey, in 1820; and Pennsylvania, in 1838.

The right of the negro to vote was disputed under the old constitution of Pennsylvania prior to 1838. It was held that "freeman" was used in a political sense, that it did not mean one who was free of condition merely, and that a negro could not be in Pennsylvania a freeman in this sense. The supreme court, in Hobbs *vs.* Fogg, in 1837, declared that a negro or a mulatto was not entitled to vote.[2]

It is certain that negroes voted in the early years of Maryland. Evidence was given in the Baltimore county court about 1810, that a certain free black of that county had voted and had been allowed to give evidence in a case in which white persons were concerned. We hear of a free black who was accustomed to vote in Baltimore and did not know of the amendment of 1810 until his vote was challenged. It is said that he thereupon addressed the crowd about the polls "in a strain of true and passionate eloquence."[3]

New York made an honest effort to help the negro to the ballot. There was no color line in the constitution of 1777; but by a law enacted first in 1811 and reënacted in 1814, a negro, on offering to vote, had first to produce a certificate of freedom. The constitution of 1821 further differentiated between black and white electors, and enacted that no negro should vote unless he had been a citizen for three years, and had for a year possessed a freehold worth $250 above all encumbrances and had actually paid a tax on the same. In 1846, the question of equal suffrage for the two races was sub-

[1] It was provided in 1783 in Maryland that no colored person freed after that date, nor the issue of such, should vote.

[2] Kent, II, 301. Chief Justice Gibson, in delivering the opinion, credits the report of a decision in 1795, that negroes could not vote. Hurd, II, 70, 72.

[3] Brackett, The Negro in Maryland, 186.

mitted to the people separately, in the shape of a constitutional amendment, and was rejected by 223,834 to 85,306. It met the same fate in 1860, by 337,984 to 197,503, and again in 1868, by 282,403 to 249,802.[1]

3. None of the other states and territories that had organized governments in 1861 had ever granted the ballot to the negro. This includes California, Colorado, Illinois, Indiana,[2] Iowa, Kansas, Michigan, Minnesota (which declares that "no member of this state shall be disfranchised" and then limits the ballot to "whites and persons of Indian or mixed white and Indian blood"), Missouri, Nebraska, Nevada, Ohio,[3] Oregon, Utah and Wisconsin.[4]

From this survey of the North and West, it is evident that few of the states that fought for the Union were then willing to grant suffrage to the negro on equal terms with the whites. Five of the New England states had granted him the privilege in form. It was not perfect even here, for Chanceller Kent says in the sixth edition of his commentaries, published in 1848, — and this statement is quoted with approval by Chief Justice Taney in the Dred Scott case, — that in no part of the country except Maine did the negro, in point of fact, participate equally with the whites in the exercise of civil and political rights.[5] The middle states had all ultimately withdrawn or restricted the right to vote. All the new Western states, including those where slavery was forbidden by the Ordinance of 1787, had refused the negro the suffrage. Some required negroes to be registered; one (Ohio) to give bond that they

[1] Poore, 1334, 1343, 1350, 1353; Hurd, II, 54, 55.

[2] Illinois by the constitution of 1848, and Indiana by that of 1851, forbade free negroes to migrate to the state and forbade masters to carry slaves into the state for the purpose of freeing them. These sections had previously formed part of the statute law.

[3] The privilege was not denied to those that were more than half white. In 1859 a law was passed requiring judges to reject the offered vote of a person "who has a distinct and visible admixture of African blood."

[4] Hurd, II, 122. A decision of the supreme court of Wisconsin made in 1866, in the case of Gillespie *vs.* Palmer, held that the right of suffrage had been extended to negroes in that state by the vote of the people at the general election held Nov. 6, 1849. Poore, 2022, 2030.

[5] Dred Scott decision, 22; so in Kent, 10th ed. (1860), II, 298.

would not become a public charge; two (Indiana and Illinois) even forbade them to enter their borders and forbade masters to bring slaves there for the purpose of giving them freedom. Nor was this feeling of repugnance overcome by the war. In 1865 Connecticut gave a majority of 6272 against negro suffrage; in 1867 Ohio voted it down by 50,620, Kansas by 8923 and Minnesota by 1298.

III. *The Evolution of Negro Suffrage.*

White manhood suffrage was recognized in none of the original thirteen states in 1776. After the adoption of the Federal Constitution the tendency was steadily toward the extension of the franchise. But the South had not arrived at universal suffrage for white men in 1860. North Carolina (from 1854) and Georgia (from 1789) required the payment of taxes and Florida (from 1838) required military service, as prerequisites for voting. There was little thought of uniform suffrage for black and white in any part of the Union. Negro suffrage was one of the results of the war. The constitutional history of the Civil War is summarized in the thirteenth, fourteenth and fifteenth amendments, in which may be traced the gradual growth of the sentiment of the nation concerning slavery and the political rights of the negro. The victory of the federal armies sealed the fate of slavery, and this was expressed in the thirteenth amendment. The Republican victory in the elections of 1866 led to the incorporation of impartial or negro suffrage in the Reconstruction Acts; and the victory of the same party in 1868 led to the incorporation of impartial suffrage in the constitution. The fourteenth amendment advanced the negro to the status of a citizen, but did nothing affirmatively to confer the suffrage upon him; it aided him negatively by imposing a penalty on his exclusion. Nor did the fifteenth amendment give him the right to vote; it merely invested the citizen of the United States with the right to be exempt from discrimination in the exercise of the elective

franchise, on account of his race, color or previous condition of servitude.[1]

Negro suffrage formed no part of the policy of the Republican Party on the abolition of slavery in 1865. The leaders of the party declared at that time that negro suffrage was unwise and dangerous.[2] In a speech at Richmond, Indiana, on September 29, 1865, Hon. Oliver P. Morton, in discussing the question, remarked that to say "men just emerged from slavery are qualified for the exercise of political power, is to make the strongest pro-slavery argument I ever heard. It is to pay the highest compliment to the institution of slavery."

There was no negro suffrage in President Lincoln's plan of reconstruction. His theory was that the relations of the insurrectionary states to the federal government were simply suspended by the war; that the states were never out of the Union and were always subject to the constitution. His business was simply to restore civil authority in them as soon as they ceased to fight. His theory left the question of suffrage entirely in the hands of those who were entitled to vote at the date of secession, and this was the view of his cabinet. To this policy President Johnson succeeded. President Lincoln a short while before his death had caused a bill to be prepared for the reconstruction of North Carolina. This identical bill was read in the first cabinet meeting after his death and was the basis of all of President Johnson's work.[3]

There was no negro suffrage in the Davis-Wade plan of reconstruction. It had always been a part of the Sumner and Stevens plans; but these men were in advance of their party. The sentiment of Congress, however, growing in opposition to the presidential and the Davis-Wade plans, became steadily stronger in its approval of "impartial suffrage" as a condition of the reconstruction and reorganization of government in the Southern states. In 1867 Stevens said:

[1] So the Supreme Court. *Cf.* 92 U. S. 214.

[2] See *North American Review*, cxxiii, 267.

[3] For the identity of the views of Lincoln and Johnson on this subject, *cf.* McCulloch, Men and Measures of Half a Century, 378 *et seq.*

White union men are in a minority in each of those states. With them the blacks would act in a body, form a majority, control the states and protect themselves. It would insure the ascendency of the Union Party.

Sumner favored negro suffrage not only in the South but in other parts of the Union as well, and he avowed as frankly as Stevens the motives actuating him. He writes from the Senate chamber, April 20, 1867, to the editor of the *Independent*:

You wish to have the North "reconstructed," so at least that it shall cease to deny the elective franchise on account of color. But you postpone the day by insisting on the preliminary of a constitutional amendment. I know your vows to the good cause; but ask you to make haste. We cannot wait. . . . This question must be settled forthwith: in other words, it must be settled before the presidential election, which is at hand. Our colored fellow-citizens at the South are already electors. They will vote at the presidential election. But why should they vote at the South, and not at the North? The rule of justice is the same for both. Their votes are needed at the North as well as at the South. There are Northern states where their votes can make the good cause safe beyond question. There are other states where their votes will be like the last preponderant weight in the nicely balanced scales. Let our colored fellow-citizens vote in Maryland, and that state, now so severely tried, will be fixed for human rights forever. Let them vote in Pennsylvania, and you will give more than 20,000 votes to the Republican cause. Let them vote in New York, and the scales which hang so doubtful will incline to the Republican cause. It will be the same in Connecticut. . . . Enfranchisement, which is the corollary and complement of emancipation, must be a national act, also proceeding from the national government, and applicable to all the states.[1]

These views were clear-cut and to the point, but in 1865 the party was not yet ready to accept them. At the meeting of Congress in December of that year, Mr. Stevens introduced and had passed by both House and Senate a resolution

[1] Works, IX, 356. See also his letter in the same strain of October 29, 1865. *Ibid.*, IX, 500. The letter to Sumner from the negroes of Wilmington, N. C., April 29, 1865, is the first public expression of their interest in the suffrage.

to provide for a joint committee of fifteen to report on the condition of "the states which formed the so-called Confederate States of America," and it was later agreed that no members should be admitted to Congress from the late insurrectionary states until the report of this committee had been finally acted on.[1] This gave time for the growth of the sentiment favoring negro suffrage, and the fourteenth amendment soon became an essential element in the plan of reconstruction by Congress. The first section was to overturn the still binding principle of the decision in the Dred Scott case, that negroes, even though emancipated, could never become citizens of the United States. Its other sections were intended to make it to the interest of the Southern states to allow the right of suffrage to the negro, and to encourage them to do so. The negro was made a citizen and was guaranteed the same rights as the white citizens, but the right to vote was not expressly granted to him. This amendment was passed by the Senate June 8, 1866, by a vote of 33 to 11, and by the House, June 13, by a vote of 138 to 36. It was rejected by Delaware, Kentucky and Maryland, was not acted on by California, and was rejected by Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas and Virginia, at their legislative sessions between November 9, 1866, and February 6, 1867.

Had the Southern states acted more prudently here, it is possible that many of the evils which followed might have been avoided in part, and negro suffrage itself might have been introduced not abruptly, but by degrees. But it was not natural for them to act otherwise than as they did, and the rejection of the amendment showed the utter impossibility of getting the ratification of the necessary three-fourths of the states so long as the Southern states remained *in statu quo*. It forced Congress to choose between the presidential policy and negro suffrage.

In February, 1867, an official effort, endorsed by the president, was made to induce the Southern legislatures to propose

[1] See Henry Wilson, History of Reconstruction.

an amendment of their own. The plan included the amendment of the constitution of each state by giving the suffrage to all male citizens who could read and write and who owned taxable property worth $250. The amendment was offered in the legislatures of North Carolina and Alabama. Their refusal to consider it put an end to the effort. Besides this, the Vagrancy Laws and Black Codes had irritated many honest Northern men, who did not understand the situation and thought that an effort was making to reënslave the negro. The rank and file of the party were now fast coming to the position which Stevens and Sumner had long held.

Congress then went on with the work of reconstruction. December 13, 1866, Stevens had introduced a bill to reconstruct the government of North Carolina in which suffrage was given to males able to read and write. This never became law; but instead a general Reconstruction Act was passed, March 2, 1867. It declared the government of the Southern states provisional only until, among other conditions, the fourteenth amendment should be ratified, and new constitutions should be adopted, framed by "delegates elected by the male citizens of said state, twenty-one years old and upward, of whatever race, color or previous condition." Under this act Alabama in 1867, and North Carolina, South Carolina, Georgia, Florida, Mississippi, Louisiana, Texas and Arkansas in 1868, held conventions chosen in accordance with the terms of the Reconstruction Act. These conventions, where, for the first time in the history of the Southern states, negroes sat in the same legislative halls with white men, framed constitutions providing for impartial suffrage and ratified the fourteenth amendment. It was proclaimed July 28, 1868.

The fourteenth amendment had only sought to stimulate the states to grant the suffrage to the negro. The fifteenth amendment deprived the states of the power to deny him the suffrage. It was proposed by Congress February 26, 1869; passed the Senate by a vote of 39 to 13, and the House by 144 to 44; was not acted on by Tennessee; was rejected by California, Delaware, Kentucky, Maryland, New Jersey, Oregon, and

by New York, which first ratified and then rescinded her ratification; was finally ratified by twenty-nine states; and was declared in force March 30, 1870.[1] Negro suffrage thus became a part of the organic law of the nation. President Grant, in announcing its ratification to Congress, spoke of it as "a measure which makes at once four millions of people voters." This, however, was not the case; the negro had been a voter in the South since 1867. His voting had been made a prerequisite to the readmission of the late insurrectionary states into the Union. His ballot had helped to choose the legislators who voted to adopt the fourteenth and fifteenth amendments. He was permitted (strangely enough) to assist in making the very law under which he was to exercise the right of suffrage!

Justice Hunt, in the case of United States *vs.* Reese, has given what may be termed the personal reasons for the existence of the fifteenth amendment: (1) That the franchise would benefit the colored race by giving them importance, securing to them respect, protecting them against unfriendly action or legislation; and (2) that its exercise would be to them an educational process of the highest importance, not only inciting them to prepare themselves for the duties of citizenship, but accustoming them to the practical performance of such duties.[2] To these reasons Judge Cooley adds what he calls public grounds: (1) That unless the ballot had been given to the freedmen, the government of the Southern states must for a considerable time have been in the hands of those lately in rebellion, who might be expected not to coöperate in government heartily with those from whom they had tried to break away; and (2) that the existence in a political community of a great body of citizens against

[1] It is by no means true to say that this amendment was repudiated by the whole body of the Southern whites. In 1869 the white people of Mississippi voted unanimously in favor of its ratification; for they believed that when the negro was once made a free man, a property-holder and a taxpayer, he could not be excluded from the remaining privilege and duty of a citizen, the right and obligation to vote. L. Q. C. Lamar, in *North American Review*, cxxviii. 231.

[2] 92 U. S. 214, 217.

whom the laws discriminate in a particular which makes the discrimination a stigma and a disgrace, must always be an occasion of discontent, disorder and danger.[1]

IV. *Negro Rule and its Results.*

When the war ended and the negro and his quondam master returned to their old homes, there was in most cases a quiet acquiescence in the new order of things. The negro, thanks to two hundred and fifty years of servitude, was docile, and was not in many cases disposed to put himself forward beyond the sphere in which he had been accustomed to move. His greatest ambition was manifested in his new desire for churches and schools. So natural and proper did this seem, that the old planter, on reorganizing his estate, was willing to assume in the contract the obligation to maintain these institutions. But this fraternal relation was changed upon the acquisition of the ballot by the negro. The national Congress might make these freedmen voters, but it could not make them intelligent voters. They became the prey of adventurers. Agents of the Freedman's Bureau, military officers, retired soldiers from negro regiments, small traders in articles of negro luxury, — all that class of adventurers who are summed up in the meaning word "carpet-bagger," began to swarm over the South. The Union League and the Loyal League were organized, and the cry of "forty acres and a mule" was abroad in the land. From pulpit and platform, from press and teacher's desk the negro was taught to hate his late master as the worst enemy of his race.

The natural and inevitable results were soon apparent. The negroes hung together as one man and were completely subservient to the will of the demagogue, "carpetbagger" or "scallawag," as the case might be. The Southern whites had been disfranchised; the adventurers then got the big offices; the negroes got the little ones. In November, 1874, there were in South Carolina alone two hundred negro trial justices who

[1] Principles of Constitutional Law, 264, 265.

could neither read nor write. There were negro school commissioners equally ignorant at a thousand a year; while negro juries, deciding delicate points of legal evidence, settled questions involving the lives and property of their late masters. Property, which had to bear the burden of taxation, had no voice; for the colored man had no property and the business of the carpet-bagger was office-holding. Taxes were levied ruinously; money was appropriated with a lavish hand. The history of one state is the history of all.

The public debt of Alabama was increased between 1868 and 1874 from $8,356,083.51 to $25,503,593.30. A large part of this went for illegitimate expenses of the legislature; much more was in the form of help to railroads; much went into the hands of legislators and officers; little was returned to the people in any form. In 1871 the Louisiana legislature made an over-issue of state warrants to the extent of $200,000; some of these were sold at two and a half cents on the dollar and redeemed at par. In 1873 the tax levy in New Orleans was three per cent, and four and a half years of Republican rule cost Louisiana 106 millions. Clark County, Arkansas, was left with a debt of $300,000 and $500 worth of improvements to show for it; Chicot County spent $400,000 with nothing in return; and Pulaski County a million. County and school scrip was worth ten to thirty cents on the dollar, and state scrip with five per cent interest brought only twenty-five cents. The debt of Tennessee for railroads and turnpikes was increased by $16,000,000, and these bonds with six per cent interest were sold at from seventeen to forty cents on the dollar; state bonds were practically valueless. In Nashville, when there was no currency in the treasury, checks were drawn, often in the name of fictitious persons, made payable to bearer, and sold by the ring to note-shavers for what they would bring. Warrants on the Texas treasury brought forty-five cents. In 1869 the state tax on real estate in Mississippi was ten cents on the hundred; in 1874 it was $1.40. In 1860 the expenses of the Florida legislature were $17,000; in 1869 they were $67,000. Bonds to the amount of $4,000,-

000, which this state issued to subsidize railroads, were marketed at fifty cents. The debt of Georgia was increased $13,000,000 during the two years of Governor Bullock. In 1868 the legislature of North Carolina in less than four months authorized the issue of more than $25,000,000 in bonds, principally for railroads; $14,000,000 were issued, and sold at from nine to forty-five cents on the dollar; but not a mile of road was built. The counties began to exploit their credit in the same way, and some of the wealthier had their scrip hawked about at ten cents on the dollar.[1]

But it was in South Carolina that this flood of iniquity reached its highest. Mr. James S. Pike, a Republican and an original Abolitionist, writing the history of reconstruction in South Carolina from what he saw and heard in the South Carolina legislature in February and March, 1873, divides the frauds committed, or in operation, into eight classes: (1) Those relating to the state debt; (2) frauds in the purchase of lands for the freedmen; (3) railroad frauds; (4) election frauds; (5) frauds practiced in the redemption of the notes of the Bank of South Carolina; (6) census fraud; (7) fraud in furnishing the legislative chamber; (8) general legislative corruption. The seventh and eighth classes seem to have been among the most fruitful sources of evil. The joint investigating committee appointed in 1877 found that almost everything used by civilized man had been charged up to the state, under the expansive term "supplies." The vouchers for these supplies include English tapestry, Brussels carpeting, English velvet door mats, English oilcloths, French velvets, silk damask, Irish linens, billiard-tablecloths, woolen blankets, ladies' hoods, ribbons, crêpe, scissors, skirt braid and pins, toothbrushes, hooks and eyes, boulevard skirts, bustles, chignons, palpitators, garters, chemises, parasols, gold watches and chains, gold jewelry, diamond rings, diamond pins, knives and forks, pocket pistols, horses, mules, harness, buggies and carriages. Senator Hampton says that this is hardly a tenth part of the list.[2]

[1] Why the Solid South? *passim*.

[2] Wade Hampton in *The Forum*, June, 1888.

The negro did not inaugurate this régime. In the first place, after he obtained the ballot, he was deserted in many cases by his late master, who should have been his guide and friend. He was thus left to learn the lesson of political life the best he could. It was at this juncture that the adventurers came in. They were in most cases unidentified with the community in interest, habit or sympathy. They found the negro adrift, captured him, used him for their own purposes and divided the spoils with him.

In some cases the negro himself began to revolt from this new slavery to men "who exercised power without right or merit, and amassed wealth without labor," who controlled his vote in the interest of a single party, and taught him that to scratch a name on that party's ticket was a sin little short of damnation. Hon. H. R. Revels, who represented Mississippi in the Senate of the United States, wrote President Grant :

> Since reconstruction, the masses of my people have been, as it were, enslaved in mind to unprincipled adventurers, who, caring nothing for the country, were willing to stoop to anything, no matter how infamous, to secure power to themselves and perpetuate it. My people are naturally Republicans, but, as they grow older in freedom, so do they grow in wisdom. A great portion of them have learned that they are being used as mere tools, and, as in the late elections [in Mississippi], not being able to correct the existing evil among themselves, they determined by casting their ballots against these unprincipled adventurers to overthrow them.[1]

It was largely because of the lack of education and political experience that the negro thus became the tool and instrument of all sorts of frauds. Then began in the South the era of the theft of ballot-boxes, stuffing of ballot-boxes, certification, exchanging, removing of polls to unknown or unfrequented places, counting out, doctoring, repeating, erasing names from registration books, illegal arrests before the day of election and throwing out returns. Whatever lessons the Democrats may have learned later in these matters, their teaching came from the early reconstruction days. These things were unknown

[1] See T. A. Hendricks in *North American Review*, cxxviii, 343.

before the war. The reconstructionist was hoist by his own petard.

The adventurers sowed the seeds of their own destruction in another way. They fused the white elements into a single body. The old antithesis of Whiggery and Democracy was still strong in the South; the opposition between original secessionist and unionist had not disappeared, and the lines of division were clear until the pressure of reconstruction was felt. Then old enmities were lost in the struggle against the new enemy. White men have made the South "solid," not for Democracy, but against the negro. Southern men are Democrats because an ethnic whip is continually cracked over their shoulders. During the campaign of 1888 a negro paper of Goldsboro, N. C., said that any negro who voted the Democratic ticket should be struck thirty lashes. "In the name of high heaven, how many lashes does the white man who votes the Republican ticket deserve?" was the Democratic answer.

V. *The Present Status of Negro Suffrage.*

The year 1876 marks the end of reconstruction. Virginia, North Carolina, Georgia and Tennessee were redeemed from negro rule in 1870; Texas in 1873; Alabama and Arkansas in 1874; Mississippi in 1875; and the centennial year of American independence saw order restored in South Carolina, Florida and Louisiana. Since then these states have been Democratic. We have now to see what action has been taken by them in the matter of limiting the franchise.

There have been in most of the Southern states two constitutions since the war. The first set were the work of the reconstructionists; the latter were the work of the native whites. The first gave the suffrage to all adult males except such as were disfranchised for crime or because of mental incapacity; but many classes of Confederates were disfranchised by a stringent test oath, and the votes of those who could take the oath were often thrown out in the unceremonious fashion already referred to. The constitution of Georgia

refused the suffrage to any one who had not paid his taxes, and the constitution of Florida provided for an educational qualification after 1880. On the other hand, the Mississippi constitution of 1868 forbade that any property or educational qualification for suffrage should be demanded of her citizens prior to 1885. Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina and South Carolina required a registration of voters of some kind, but very lax, and of little importance. No registration was required in Texas ; nor did Arkansas and Texas require it under their revised constitutions of 1874 and 1876 respectively.

Various miscellaneous provisions which have been made from time to time in different states regulating the ballot, but which can in no wise be construed as a limitation on the right of the negro, are omitted from consideration here. That a practical limitation may be the result of legislation to which, on the face of it, no possible odium can attach, may be seen in the working of the rule by which all the Southern states — probably most of the United States — disfranchise persons guilty of infamous crimes. This term covers anything from murder to petit larceny. In the North Carolina gubernatorial election in 1888, the majority for Fowle, the Democratic candidate, was only 14,450 over Dockery, his Republican opponent. We have no exact figures of the numbers disfranchised as criminals in North Carolina, but we can approximate it from a publication of the Democratic state executive committee in 1888. This publication contains lists of ex-convicts from fifty-eight of the ninety-six counties. In nine of these fifty-eight the color of the ex-convicts is not specified. In the other forty-nine there are registered 2969 colored ex-convicts. If we assume that this represents half of the convict population of color, the number of colored voters is diminished between five and six thousand. This is obviously an important fact in a close state, where the white vote is slightly in the majority, but which might, for temporary causes, be in danger of falling under negro rule. The law in this case is doubtless abused at times in the interest of the ruling race.

The methods through which it is sought legally to nullify and restrict the negro vote may be classified under four principal divisions: 1. By centralization; 2. By the requirement that taxes be paid before voting; 3. By great complexity in the election laws, which serves indirectly as an educational test; 4. By an express educational qualification.

1. In North Carolina negro majorities are overcome by centralization. The state as a whole is safely Democratic. Accordingly the legislature elects the justices of the peace for all the counties, and these justices in turn elect the boards of county commissioners. The other county officers are chosen by the electors. This system is anything but democratic, but it results in keeping the county funds entirely in the hands of the more conservative and better element of the population. It is displeasing to the western counties, where there is a large white majority, but they bear it for the sake of preserving the eastern part of the state from a return of reconstruction conditions. There is a somewhat similar plan of local government in Louisiana.

2. Six states have tried the requirement of taxes. In Virginia a constitutional amendment in 1876 required the payment of a poll tax as a prerequisite to voting, but this was repealed in 1881–82. It was found to stimulate wholesale bribery in elections. That party which had the most money could pay the most capitation taxes and secure the most votes. Through the aid of rich Republicans in the North the taxes of the negroes were more generally paid than those of the whites.

Arkansas adopted an amendment to her constitution in 1892 requiring a poll-tax receipt as a prerequisite to voting. This has simplified the matter in that state. The law works well, and the negro vote is said to be practically eliminated. How it would be if the whites should be divided, as in South Carolina, yet remains to be seen. A poll tax was also required in Florida under the constitution of 1885, and in Mississippi under that of 1890.

The experience of Tennessee in the matter of negro suffrage and the tax requirement has been varied. The strong minority

which opposed negro suffrage in the convention of 1870, though they failed in their main purpose, nevertheless succeeded in securing a requirement of poll tax. But this proved unsatisfactory. In 1871 a law was passed under which no proof of payment for the year 1872 was to be required. In 1873 the tax requirement was repealed entirely. At the extra session of 1890 the poll tax qualification was again enacted, and in 1891 this law was so amended that the original poll-tax receipt, or a duly certified duplicate, or an affidavit that the voter had paid his poll tax and the receipt "is lost or misplaced," was required as preliminary to voting. This law also bars out the person who disposes of his receipt for any valuable consideration.

Georgia seems to have been more successful in the requirement of taxes than any other state. This was put into the constitution in 1789, and has been uniformly maintained since then. In 1887 Senator Colquitt said in *The Forum* that the tax qualification had operated with important effect on the colored voters, and that the number of defaulting colored taxpayers was becoming larger each year.

3. The method most in favor in the South for limiting the negro vote is through intricate registration and election laws. These vary in different states, and have been changed from time to time in the same state. They may be divided roughly into two classes, as the so-called Australian system prevails or not. Some form of this system obtains in Alabama, Arkansas, Mississippi, Tennessee and Virginia. It does not obtain in Florida, Georgia, Louisiana, North Carolina, South Carolina and Texas. The laws of these latter states represent the older ideas, are less successful and less just than the others, and little can be said in their defense. But, as we have already seen, North Carolina partly escapes from the trouble by centralization; Georgia and Florida have a tax requirement; there is hardly a negro problem in Texas, except in a few of the eastern counties; and Louisiana is now striving for a new law requiring both taxes and education. It is in South Carolina, and to a less extent in Florida and Virginia, that registration is depended on to solve the difficulty.

Under the present law in Florida the books for registration must be closed on the second Saturday in September. Each elector, on being registered, is furnished with a certificate, numbered in each district consecutively. This must "contain a statement of the full name, age, color, height, occupation, place of residence and date of registration as entered in the registration books, which certificate shall be signed by the registration officer." No person is allowed to vote save in the district in which he is registered,

> nor shall any person whose name does not appear upon the registration books be allowed to vote unless he produces and exhibits his certificate of registration to the managers of election: and he shall not then be allowed to vote unless the certificate of registration which he exhibits shall satisfactorily identify him to the managers of the election.

Certificates can be renewed when defaced by surrendering the old, or when lost, by establishing proof of loss. To do this the voter must state the "facts of his former registration and of such loss, and that he has not sold, bartered or parted with his certificate for any pecuniary or other valuable consideration." If an elector removes from one residence to another in the same district, or from one district to another in the same county, he is to notify the supervisor of registration, surrender his certificate and receive a certificate of transfer of registration, and without this certificate of transfer he cannot vote. If an excess of votes is found, the excess over the registered number of voters is to be taken out and destroyed.

In South Carolina, where the evil of negro numbers is greatest, the laws are most complex. Under the statutes of 1882 there is for each office a special ballot, the size and character of which are minutely prescribed. There are eight ballot boxes, and the office for which each is intended is written on it; these names are to be read aloud to the elector, at his request, by the managers; no one else can speak to him while he is in the polling room; the ballot must be inserted by his own hand, and no ballot is counted if found in the wrong box. If more ballots are found in the box than there are names on

the poll list, the ballots are returned to the box, thoroughly mixed together, and one of the managers or the clerk withdraws from the box and immediately destroys the excess of the ballots over the number of voters. Registration is required and is confined to three days. The registration books are closed on the first day of July. A certificate of registration is also required, and the person can vote only when this certificate is produced. If the elector removes from one residence to another in the same precinct, he must surrender the old certificate and get a new one. This has to be done also when he removes from one precinct to another, or from one county to another. By a law passed in 1883, if a certificate is lost, it may be replaced, provided it has not been disposed of for any valuable consideration. In 1885, when a new law established some new polling places, changed the locality of the old ones, *etc.*, the old certificates had to be surrendered and new ones obtained.

It will be noticed that the complexities of these laws are enough to confuse a mind better trained than that of the average negro. To him they are, for the most part, beyond comprehension. It is said that as soon as the ignorant voters began to understand the arrangement of the boxes, the boxes were shuffled, and many votes were lost before the order was again unraveled. It will be seen, also, that the registration books are closed on the first of July, while the voter has to present his registration certificate on voting day. Now, a negro is not used to preserving papers; it frequently happens, therefore, that the certificates are lost or worn out, and they can be renewed only under certain limitations. It is said that in a certain section the negroes took their certificates to their preacher for safe keeping; he promised to put them into a box and preserve them until needed. He put them into the box, but a few days before election the Democrats hired him to go over to Georgia and take this box with him. Another story is told, but I am unable to vouch for its truth. Some years ago Barnum appeared in South Carolina with his circus. Under instruction from the Democrats he advertised that the admission

fee was fifty cents or a registration certificate. The negroes, acting on the theory that a circus to-day is better than a vote next week, handed over their certificates and saw the show. When election day came, the fact that they had registered was disputed by no one, but they could not prove that the certificates had been lost, and hence they were legally disfranchised.

The laws of Alabama, Arkansas, Mississippi, Tennessee and, in part, Virginia, embody the best elements of the reform ballot law in the South. They all reproduce essential features of the Australian system and these provisions act more or less distinctly as an educational qualification.

In 1893, Alabama enacted what is known as the Sayre Election Law. It was framed in answer to a demand that some method be devised by which the necessity of suppressing any part of the vote might be obviated; it disfranchises no one, and it is rather significant that the bitterest opposition to it has come from the Populists. It is modeled largely on the election laws which have been recently enacted in other Southern states. The registration feature comes from Tennessee, while many parts are taken from the new Arkansas law. In Alabama registration can be made only in May, and within the precinct or ward where the vote is to be cast. There is one ticket for all candidates, and the names are arranged alphabetically, without distinction of party, under the respective offices. The voter enters the booth and marks his ballot without assistance; if unable to do this, he may call one of the managers of election to his aid. No time longer than five minutes is allowed for voting, and an ignorant voter can tell the assistant the way he wishes to vote only when all others have withdrawn from the polling place. In addition to this, the voter has in all cases to show his certificate of registration. The provision in regard to ignorant voters has been variously interpreted in different localities. In some cases the assistant is allowed to mark the ballot after the voter has expressed merely his party preference; in other cases the voter is required to name each person for whom he wishes to vote. The possibilities of the latter requirement as an intelligence test are obvious.

The Arkansas law of 1891 is very much like that of Alabama, and was one of the originals on which the latter was based. It requires no registration, but a poll-tax receipt instead. The names of all candidates are printed on a general ticket without regard to party or alphabetical order, and these tickets are numbered as voted. They can be obtained only from the judges of election within the polling place. The voter is then required to retire to a booth, and is allowed five minutes to prepare his vote by scratching, erasing or crossing out all names not wanted. No one can help him to do this except the judges of election, who are of different political parties. If necessary, the ignorant voter can call two of these to his assistance, and they will prepare his ballot for him; but before he is allowed to tell them how he wishes to vote it is necessary that all electors, including those in the booths, retire from the polling room. In precincts where there are more than one hundred voters the races are required to vote alternately. It may happen that in large negro precincts some are excluded for lack of time, but in no other way can hardship come to the negro. Some ten or twelve counties in the southern and eastern part of the state gave considerable trouble because of their negro population. But this has been settled by the new law. An Arkansas official says that it "virtually lifts from us the black cloud of negro domination." And again he says: "The law works smoothly, quietly, satisfactorily, beautifully, and I pray God every Southern state may soon have one like it."

Tennessee has made some advance toward the Australian ballot, but the results are limited because the law of 1890 is made applicable only to counties with 70,000 inhabitants, and to cities with 9000. The registration law of 1890 applies to counties with 70,000 inhabitants and to "towns, cities and civil districts" of 2500. The registration certificate must tell the name and color of the elector, the ward or district in which he resides and the election in which he is qualified to vote, and must be presented at the ballot box. The law when put into operation is not essentially different from those of Alabama and Arkansas, except that there is less provision for the ignorant voter.

> The registrar shall upon the demand of any voter . . . give to such voter a correct statement of the order in which the titles of the various offices to be filled stand upon the particular ballot furnished to such voter.

With only this provision for aid at the polls, and with stringent tax and registration requirements, there is little chance for the ignorant man.

To these three states we must add Virginia, which passed a new ballot law in March, 1894. The former Virginia law was bad, having come down from the reconstruction days of 1869–70. The Walton Law, which went into effect July 1, 1894, provides for a blanket ballot, containing the names of all the candidates to be voted for, printed below the office they seek. Booths are provided, but no person can occupy one more than two and a half minutes if other voters are waiting. This law deals more tenderly with the ignorant voter than the Tennessee law. It provides that a special constable shall assist the ignorant voter by "reading the names and offices on the ballot, and pointing out to him the name or names he may wish to strike out, or otherwise aid him in preparing his ballot." From the educational standpoint this law is a failure, and the deficiency is only partly covered by the heavy requirements in the matter of registration when the voter changes his residence, and when the limits of registration precincts are changed or new ones made.

4. The educational qualification, *eo nomine*, has been tried only to a limited extent. It was provided in the Florida constitution of 1868 that there should be such a qualification after 1880, but the provision was not carried out, and there is no mention of it in the constitution of 1885. The reason for the general hesitation in making such a qualification is not far to seek. It would exclude many white Democrats, and the fear of the loss of votes has caused the party to hesitate. The only state to appeal directly and successfully to the intelligence test has been Mississippi. This state also makes use of the Australian ballot, but this phase is less important than the educational requirement. The experience of Mississippi during the

reconstruction period was probably the stormiest of all the Southern states. This was because the negro population was largely in excess of the white, the census of 1870 giving 444,201 blacks against 382,896 whites, and because the legislators were not as prudent as they might have been in the period just following the war. The state was finally reconstructed, and the constitution of 1868 provided that no property or educational qualification should be required previous to 1885. But notwithstanding these provisions, the white men of the state, by various means which cannot be enumerated here, sometimes illegal and harsh, but necessary, as it was thought, to preserve state life, obtained control of affairs, and the negro vote was largely suppressed. As far as practicality was concerned there was no need of any change in the situation thus produced. But the people felt an earnest and growing desire to devise a legal and just system of eliminating the negro vote. The constitutional convention of 1890, called to settle this matter, labored under one disadvantage. By the terms of the Congressional act under which Mississippi was restored to normal relations with the Union it was provided that the state's constitution should

> never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said state.

If this act was valid, if this condition remained binding, there could be no action in the matter at all. But the judiciary committee argued justly that no action of Congress can deprive one state of the equality it enjoys with other states under the Federal Constitution. They were then at liberty to act in the matter of establishing limitations.

Many propositions were made, and very serious consideration was given to one which bestowed the franchise on women, subject to a property qualification in addition to the regular

qualifications of men. But this was ultimately abandoned and an educational test was adopted in its place. The new constitution requires a residence of two years in the state, and one in the district, registration four months before the election, the payment of all taxes for the last two years, and further, that

> on and after the first day of January, A.D. 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the constitution of this state; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof.

There was but one negro in the convention. This was Isaiah Thornton Montgomery, of Bolivar County. He had expressed himself in favor of such an amendment as this while canvassing for election; he was elected by a negro constituency and can therefore be considered as representing their feelings on the question. He was a member of the committee on franchise. He favored the amendment while in committee; when it came before the house he delivered a remarkable speech in support of it, embodying an eloquent plea for peace and harmony between the races — a tender of the olive branch from the black man to the white. The amendment was passed and all parties have acquiesced in its enforcement. There is no longer a "negro problem" in Mississippi. The census of 1890 gives the state a white population of 544,851, and a negro population of 744,749. On the usual proportion of one in five, we have about 109,000 whites and 149,000 negroes of voting age. Mr. Montgomery estimates that the law disfranchises two-thirds of the blacks and only one-eleventh of the whites. In practice the number of negroes disfranchised is much larger than this.

The Mississippi law has proved itself, thus far, a success. It remains to be seen what the influence of such a law will be as a spur to the negro in the pursuit of an education. It is usually claimed that such laws drive him to greater efforts, while they do not have the same influence on the whites. But it is possible that this may be the ultimate solution of the

Southern problem. The Southern states are slowly but surely forging ahead in matters of education. They are improving both the quantity and the quality of their schools. If the negro improves intellectually and becomes a better citizen, this will in itself bring relief from most of the evils which the Southern people have found in negro suffrage.

The experience of Mississippi is also beginning to make itself felt in other states. Louisiana passed a single ballot law in 1882, under which registration was required, and the certificate of registration had to be produced before voting, as in South Carolina. Within the present year a committee has been appointed to revise the section of the state constitution concerning the qualifications of electors. This committee has adopted an amendment which, after stating the requirements in respect to age, residence, registration, *etc.*, provides that the elector

> shall have paid his poll tax for the year next preceding the election; he shall be able to read the constitution of the state in his mother tongue, or shall be the *bona fide* owner of property, real or personal, located in this state and assessed to him for the year next preceding the election at a cash valuation of not less than $200.

To summarize: the laws of Alabama, Arkansas, Mississippi and Tennessee embody the principle of education, and have much to commend them. These, together with Virginia, have adopted an Australian ballot, although the educational feature has been left out of the Virginia law. Georgia, Florida, Arkansas, Mississippi and Tennessee require taxes. There is little in the laws of North and South Carolina, Louisiana and Texas to commend them. Louisiana is moving for a reform. This will probably come in North Carolina; for the present law is roundly denounced by Republicans and Populists, particularly the registration feature. South Carolina will be driven to a revision; for, having completely eliminated the negro from the problem, the whites are now trying the laws on each other. During the last campaign Senator Butler is reported to have said that if he should be defeated for reëlection by Governor Tillman,

he would contest the matter before the United States Senate on the ground that the registration laws of the state were unconstitutional, and that if a full vote could have been polled, his candidates would have been elected to the state legislature. The law cannot live long in the present political atmosphere of South Carolina. It is possible that revision and reform may come in some of the other states. The Southern people desire to relieve themselves from the necessity of using either force or fraud. They recognize that both weaken the moral sense and corrupt the body politic. They know that when the negro has been eliminated, as in South Carolina, the same machinery will be used by the party in power against the the white opposition; that this is already being done, is alleged in South Carolina by the "Straight" Democrats, and in North Carolina and Alabama by the Populists.

In seeking to employ the poll tax in escaping from their unpleasant situation, the Southern people have comfort in the opinion of Judge Cooley, when he says: "To demand the payment of a capitation tax is no denial of suffrage; it is demanding only the preliminary performance of public duty."[1] The five Southern states are not alone in making such a demand. Delaware, Pennsylvania, Rhode Island, New Hampshire, all require taxes. Nor is the requirement of an educational qualification a denial of suffrage; for "ability to read is something within the power of any man," and only makes him more able to fulfill his civic duties. On the other hand, unrestricted suffrage "robs intelligence and virtue of a natural right. Intelligence and virtue are disfranchised. Ignorance and intelligence, vice and virtue, are clothed with equal power"; and Wendell Phillips himself, when advocating negro suffrage in 1865, admitted the righteousness of property and educational qualifications. Connecticut set the example in this respect as long ago as 1855, when it required all voters to be able to read the constitution and the statutes. This was the first requirement of the kind incorporated into a state constitution. Massachusetts made a similar requirement in

[1] Principles of Constitutional Law, 263, 264.

1857. The Missouri constitution of 1865 said all voters should be able to read and write after January 1, 1876. Maine adopted a similar amendment in November, 1892. In his message to Congress on December 7, 1875, President Grant urged the promotion of schools, and proposed that all voters who could not read and write after 1890 should be disfranchised. It is no unheard-of principle that has been adopted by Mississippi in 1890 and Louisiana in 1894.

It would seem that reform is already coming in Alabama under the new law, although the cry of fraud is raised by the opposition; for the returns of late elections show that the Democratic majorities come no longer from the white but from the black counties, and so well recognized has this been that the counties of the black belt, while formerly all in one Congressional district, have now been distributed among seven of the nine districts of the state. This union of the negroes with the more influential and intelligent whites, if permanent, will profoundly modify the race question, and it gives the combination best able to solve this problem.

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THE REVISION OF THE BELGIAN CONSTITUTION IN 1893.

THE constitution which had governed the Kingdom of Belgium since February 7, 1831, and which in the meantime had not undergone the slightest change, was subjected in 1893[1] to a revision of the most serious sort. The reform is undoubtedly the most important event that has occurred in Belgium since this country won the position of an independent state. It is difficult at present to forecast the various consequences which changes of so fundamental a character will necessarily entail, but it is safe to say that in the near future they will transform the conditions of political life in Belgium.

The nature of the reform may best be indicated by saying that it substitutes a democratic for an oligarchic system, or, more precisely, that it puts an end to the rule of the middle class and inaugurates the rule of the people. Although the revision has touched a number of distinct matters, the changes introduced into the composition of the electoral body are of such preponderant interest as to make the other innovations appear relatively insignificant. Belgium has 6,000,000 inhabitants. Before the revision it had but 135,000 voters. In consequence of the revision it will have 1,300,000 voters. The impression produced by these figures, however, requires certain modifications, the nature and importance of which will be indicated later.

The revision of 1893 was accomplished, on the whole, in a peaceful manner. But it was not carried through without trouble, and there were moments when the situation was decidedly critical. There are certain points in the history of the movement which, I think, deserve attention.

[1] The amendments to the constitution of 1831 were proclaimed as in force September 9, 1893.